

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14396, of Citizens Marketing, Inc. et al., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Administrator, Building and Land Regulation Administration, dated November 21, 1985, proposing to revoke Certificate of Occupancy No. B135720 for the use of the subject premises as a motel of 200 units, not sexually oriented, in a C-M-2 District at premises 1850 New York Avenue, N.E., (Square/Parcel 154, Lot 104).

HEARING DATE: February 19, 1986
DECISION DATE: March 12, 1986

FINDINGS OF FACT:

1. The appellant Citizens Marketing, Inc., et al., doing business as Capital City, Inc, is appealing the decision of the D.C. Department of Consumer and Regulatory Affairs (DCRA) proposing to revoke its Certificate of Occupancy to use the subject premises as a motel.

2. The subject site is located on the north side of New York Avenue between Bladensburg Road and West Virginia Avenue and is known as premises 1850 New York Avenue, N.E. The site is located in a C-M-2 District.

3. On July 22, 1983, the appellant was issued Certificate of Occupancy No. B135720 for the use of the first and second floors of the subject premises as a motel with 200 units, not sexually oriented.

4. On November 21, 1985, the Administrator, Building and Land Regulation Administration, D.C. Department of Consumer and Regulatory Affairs, notified the appellant by mail that the Department proposed to revoke the said certificate of occupancy.

5. The authority cited for the proposed action in the aforesaid notice of November 12, 1985, was 29 DCR 5575, Section V11(A) which in pertinent part reads:

Any Certificate of Occupancy issued pursuant to these rules may be revoked by the Director, after notice if the actual occupancy does not conform with that permitted or because of any misrepresentation in the application...."

6. There were four specifications enumerated in the said notice of November 11, 1985, namely that an Officer of the D.C. Metropolitan Police Department met with the owner and manager of the subject motel and informed him that prostitutes were using the rooms of said inn to ply their trade; police officers talked with prostitutes and were advised by the prostitutes that the owner told the prostitutes that the police were investigating the motel and that the prostitutes would have to change rooms and use different names more frequently; that the prostitutes were advised by the owner not to be out on the grounds of the motel as much until the current investigation of prostitution activities at the motel was over and that a police officer posing as a pimp obtained the owner's authorization to use the rooms of the motel for prostitutes to be used for illicit sexual activities.

7. On December 2, 1985, the appellant filed an appeal with the Board of Zoning Adjustment (BZA) from the proposed notice of the revocation of the certificate of occupancy.

8. At the public hearing of February 19, 1986, the BZA directed the parties to file supplemental memorandum of law concerning the jurisdiction of the BZA to hear the subject appeal when the basis of the proposed revocation is prostitution.

9. Sub-section 8102.1 of the Zoning Regulations provides as follows:

The Zoning Act of June 20, 1938 (52 Stat, 797), as amended, provides that appeals to the Board of Zoning Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the Federal Government affected, by any decision of an administrative officer granting or refusing a building permit or granting or withholding a certificate of occupancy or any other administrative decision based in whole or part upon any Zoning Regulations or Zoning Maps adopted pursuant to the Zoning Act.

10 . Section 8206.1 of the Zoning Regulations provides as follows:

The Board pursuant to provisions of the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, shall hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Commissioners of the District of Columbia, in the administrative or enforcement of these regulations.

11. Section 1202 of the Zoning Regulations, defines a sexually-oriented business establishment as an establishment having as s substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials and articles or an establishment which presents materials and articles or significant portion of its activity, live performances, films, or other material which are distinguished or characterized by their emphasis on matters depicting, describing or related to specified sexually activities and specified anatomical areas. Such establishments may include, but are not limited to, bookstores, newsstands, theaters and amusement enterprises. If an establishment is a sexually oriented business establishment, as defined herein, it shall not be deemed to constitute any other use permitted under the authority of these Regulations.

12. The Board finds that the alleged violation does not fit within the definition of a sexually-oriented business.

13. The appellant argues that while it is clear that the Board has jurisdiction over the proposed revocation of the Certificate of Occupancy the more troubling question is whether or not the activities such as to violate the Zoning Regulations. The appellant in no way contests the District of Columbia's authority to bring criminal prosecutions based upon criminal conduct involving prostitution. The appellant does contest attempts to apply the type of conduct alleged within the confines of the Zoning Regulations. The appellant argues that while the zoning power is based upon the police power as reasonably necessary for the public health, safety and morals or general welfare, the zoning powere is of general application as to construction and use of land. It does not reach to the activity of prostitution which may occur within the four walls of a motel room. In summary, he appellant contends that the appellee seeks to attack alleged specific activities and conduct occuring with the premises. As such, this attack, particularized in nature, is outside the scope of the general regulatory purposes of the Zoning Regulations.

14. The appellee, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), argues that the proposed action to evoke appellant's certificate of occupancy is based on the fact that the use of the premises does not conform to the certificate issued. Any use to which the premises is put continuously which differs from that authorized is a nonconforming use.

15. The appellee further argues that the Zoning Regulations are part of the general police power and are to be interpreted and applied as such. Conduct which involves illicit activity and which is continuing, in part, due to a permit issued pursuant to Zoning Regulations has zoning implications and is properly before the Board. As such, the appellee contends that the fact that the activity complained of is an illicit use and has a negative affect on the public health, morals and safety of the community and on the general welfare of the city, is a sufficient basis for the BZA to revoke their Certificate of Occupancy. The use of the premises is undoubtedly non-conforming under the Zoning Regulations.

16. Advisory Neighborhood Commission 5B in its submission dated February 24, 1986, reported that the ANC concluded that the contentions refuting the sexual orientation of Capitol City Inn were wholly indefensible. The ANC concluded that the illicit sexual activities practiced within the confines of Capitol City Inn had, beyond peradventure of doubt; (a) Inflicted a shocking, outrageous, and despicable assault upon the dignities and mores of the good people of the Arboretum Neighborhood in particular, and the ANC 5B community at-large; (b) Evinced no redeeming quality that might be remotely construed as enhancing the social and economic infrastructure of the community; and, (c) Acted to denigrate the reputation of the Arboretum community.

The Board finds that the ANC report is non-responsive to the jurisdiction issue and that such report addressed itself only to the merits of the appeal.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that it is clear that pursuant to Sub-sections 8102.1 and 8206.1 of the Zoning Regulations, the appellant has the right to file the subject appeal before the BZA. The Board concurs with the argument raised by the appellant insofar as the alleged prostitution activities in a duly licensed motel do not concern themselves with a sexually oriented business establishment within the definition set forth in Section 1202 of the Zoning Regulations. The subject issue is not a zoning issue. The Board concludes that the issue of the merits of the case is not properly before the BZA. The appellee must seek its relief before the proper tribunal or forum. Accordingly, it is ORDERED that the action taken by the DCRA was improper to revoke the Certificate of Occupancy and the case is DISMISSED.

VOTE: 5-0 (Charles R. Norris, Patricia N. Mathews,
William F. McIntosh, Paula Jewell and Carrie
L. Thornhill to DISMISS).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: *Cecil B. Tucker by P. J.*
CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 08 APR 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO
DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN
DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL
RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING
ADJUSTMENT."

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